DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	IB Docket No. 96-111
and Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	CC Docket No. 93-23 RM-7931
and COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the INTELSAT K Satellite	File No. ISP-92-007

FURTHER COMMENTS OF ICO GLOBAL COMMUNICATIONS

Richard DalBello
Francis D.R. Coleman
ICO Global Communications
1101 Connecticut Avenue, N.W.
Suite 550
Washington, D.C. 20036
(202) 887-8111

Cheryl A. Tritt
Charles H. Kennedy
Susan H. Crandall
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
(202) 887-1500

Attorneys for ICO
Global Communications

August 21, 1997

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	IB Docket No. 96-111
and Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	CC Docket No. 93-23 RM-7931
and COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the INTELSAT K Satellite	File No. ISP-92-007

FURTHER COMMENTS OF ICO GLOBAL COMMUNICATIONS

ICO Global Communications ("ICO") hereby responds to the Federal Communications Commission's ("FCC" or "Commission") July 18, 1997 Further Notice of Proposed Rulemaking ("Further Notice") in the above captioned proceedings seeking additional comment on a framework to allow satellites licensed or authorized by other countries to provide service in the United States in light of the recently concluded World

Trade Organization Agreement on Basic Telecommunications Services ("WTO Agreement").[1]

SUMMARY AND INTRODUCTION

Since the Commission issued its initial Notice of Proposed Rulemaking ("Notice") in these proceedings,[2] sixty-nine countries -- representing approximately 95 percent of telecommunications revenues worldwide -- made commitments to open their telecommunications markets as part of the WTO Agreement. These commitments -- which are binding -- promise to benefit telecommunications, including satellite, consumers worldwide. In addition, the World Telecommunication Policy Forum, comprised of 129 International Telecommunication Union ("ITU") member countries, in October, 1996 adopted a set of voluntary regulatory principles to facilitate the development of global mobile personal communications by satellite ("GMPCS").

ICO has been active in working with industry, as well as the United States and other governments, toward both of these achievements. As the Commission is aware, ICO plans to develop, launch and operate a global Mobile Satellite Service ("MSS") system that will enable customers to communicate from anywhere to anywhere in the world.[3] ICO has long

---

[1] *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, FCC 97-252 (July 18, 1997) ("Further Notice").

[2] *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 11 FCC Rcd 18178 (1996) ("Notice").

[3] A description of ICO's system is set forth in the initial comments filed by ICO in these proceedings. *See* Comments of ICO Global Communications (July 15, 1996) ("ICO Comments") at 3-5.

advocated in various international and national fora, including the Commission, open, competitive, and non-discriminatory market access for itself and its competitors. ICO believes that vigorous competition among MSS operators will best serve the public interest by producing high quality satellite services at reasonable and affordable prices. Consistent with that philosophy, ICO views the success of the United States and other WTO member countries in reaching an agreement to liberalize international telecommunications markets and eliminate political or protectionist obstacles as the historic culmination of the efforts of the satellite industry working with the United States and other governments.

The WTO Agreement significantly impacts the framework proposed by the Commission in its initial Notice to allow non-U.S. licensed satellites[4] to provide service in the United States. That framework -- which relied on application of the ECO-Sat reciprocity test -- is prohibited by the commitment made by the United States in the WTO Agreement, at least with respect to WTO member countries.[5] In its Further Notice, the Commission correctly proposes to jettison many of its earlier proposals in favor of new proposals for evaluating entry by non-U.S. licensed satellites in a manner that is consistent with the WTO Agreement. ICO is concerned, however, that the Commission -- or other parties -- not utilize the public interest test as a back door means of applying the ECO-Sat

---

[4] By the term "non-U.S. licensed satellite," we refer to a satellite that has been licensed or otherwise fully authorized (including having been coordinated for ITU purposes) by a foreign administration.

[5] ICO's arguments herein refer to those satellite services, such as Fixed Satellite Service and MSS, which are covered by the United States' commitment in the WTO Agreement; we do not herein address those satellite services -- *i.e.*, Digital Audio Radio Service and Direct-to-Home Television Service -- which are not covered by that commitment.

test in contravention of the WTO Agreement or to delay the development or deployment of non-U.S. licensed systems.

I. THE COMMISSION SHOULD ADOPT ITS PROPOSAL TO CREATE A PRESUMPTION IN FAVOR OF GRANTING REQUESTS TO SERVE THE UNITED STATES BY NON-U.S. SATELLITES LICENSED IN WTO COUNTRIES

ICO supports the Commission's proposal to abandon its ECO-Sat test for requests to serve the U.S. by satellites licensed in WTO countries and to adopt a streamlined approval process for those requests. ICO also agrees that the Commission should adopt a presumption in favor of granting those requests, and impose on opponents of those requests the burden of rebutting that presumption.

ICO strongly urges, however, that the Commission carefully and narrowly define the circumstances under which the proposed presumption may be overcome.[6] The undertakings of the United States in the WTO Agreement do not merely give the Commission sound reasons to abandon the ECO-Sat test as it applies to entities licensed by WTO members: those undertakings *require that the Commission allow WTO member licensees entry into the U.S. market.* Accordingly, the Commission may not reject requests from WTO-based satellite operators on the basis of trade disputes or other concerns that the United States now is committed to resolve within the WTO framework. Similarly, under the most favored

---

[6] The WTO Agreement requires the United States to apply its regulations to other WTO member countries in a "reasonable, objective and impartial manner." General Agreement on Tariffs and Trade: Multilateral Trade Negotiations Final Act Embodying the Results of the Uruguay Round of Trade Negotiations, Annex 1B, General Agreement on Trade in Services ("GATS"), Art. VI Domestic Regulation ("Art. VI"), 33 I.L.M. 1125, 1172 (1994). In order to satisfy these requirements, the FCC must define clearly the circumstances under which its proposed presumption may be overcome.

nation and national treatment principles of GATS, the Commission no longer is permitted to impose tests, such as ECO-Sat, that discriminate among WTO countries or in favor of U.S. licensed entities.

In order to ensure that the FCC's treatment of satellite operators licensed by WTO countries does not violate the WTO Agreement, the Commission's order in this proceeding must include at least three provisions. First, if the Commission adopts its proposed "very high risk to competition" test, it must confirm that the test does not merely reintroduce the ECO-Sat inquiry under a different name, but is a clear standard that requires proof that granting an application is certain to harm U.S. consumers. Second, the Commission must confirm that in the post-WTO Agreement environment, only public interest concerns based on national security and law enforcement -- not trade disputes between the United States and other WTO member countries -- will justify denial of a request from a satellite operator licensed in a WTO member country. Third, with respect to spectrum availability and spectrum coordination, the Commission should exhaust every technical option to accommodate entry by non-U.S. licensed satellites.

A. The Commission Must Abandon The Proposed ECO-Sat Test For Requests To Serve The United States By Satellite Operators Licensed In WTO Member Countries

Application of the ECO-Sat test to satellites licensed by WTO member countries would violate the commitments made by the United States under the WTO Agreement. Specifically, imposing the ECO-Sat test on non-U.S. licensed operators from WTO member countries seeking access to the United States would violate both the most favored nation and national treatment principles of the GATS, by according more favorable treatment to countries that passed the ECO-Sat test than to other WTO members, and by according

operators authorized by WTO member countries other than the United States less favorable treatment than U.S. licensed operators.

Even if abandonment of the proposed ECO-Sat test were not mandated by the WTO Agreement, the supposed need for proof of "effective competitive opportunities" in the home markets of satellite operators licensed by WTO nations would be obviated by that agreement. The Commission first proposed its ECO-Sat test as a means of denying access to the U.S. market to satellite operators authorized by, or offering service to, nations from which U.S. licensed satellite operators are excluded. The Commission's concern was that permitting such satellite operators to serve the U.S. market would cause "market distortion" by subjecting U.S. satellite operators to competition from non-U.S. satellite operators that enjoyed a competitive advantage based purely on exclusionary practices.[7] By denying applications from such non-U.S. satellite operators under the ECO-Sat test, the Commission hoped to protect U.S. satellite operators from unfair competition and encourage foreign administrations to open their domestic markets to U.S. satellite operators.

The WTO Agreement resolves these concerns.[8] Under the WTO Agreement, many of the world's major trading nations have committed to open their telecommunications markets -- including their satellite markets -- to competition. Accordingly, WTO member nations may not engage in exclusionary practices of the kind that could give their licensees a

---

[7] Notice at 18184.

[8] Even if no WTO Agreement had been concluded, application of the ECO-Sat test to MSS would be impractical, discriminatory and anticompetitive. *See* ICO Comments at 21-36; Reply Comments of ICO Global Communications at 2-14 (Aug. 16, 1996).

competitive advantage over their U.S. licensed counterparts. Requiring non-U.S. satellite operators authorized by WTO member countries to prove the absence of such exclusionary practices before securing permission to serve the United States, therefore, no longer is necessary to achieve the Commission's pro-competitive aims.

B. If The Commission Adopts A "Competitive Harm" Test, It Must Require A Showing Of Very High Risk To Competition In Order To Overcome The Presumption That WTO Member Licensees' Requests Will Be Granted

The Further Notice proposes that the Commission may deny a WTO member licensee's application to serve the U.S. market where granting that application poses a "very high risk to competition in the United States satellite market."[9] To the extent this proposed competitive harm standard merely confirms the Commission's continuing, concurrent jurisdiction to enforce the U.S. antitrust laws, ICO does not disagree with that standard. The WTO Agreement does not abrogate the authority of any member country to enforce its anticompetition laws in its domestic markets. The WTO Agreement does, however, require member nations to use trade dispute mechanisms, rather than exclusion from domestic markets, as a means of resolving claims that the markets of other WTO members are not sufficiently open to competition.

There is no inconsistency between these principles. The U.S. antitrust laws neither require nor permit the exclusion of competitors from markets because of concerns about the conduct of those competitors after they are admitted. The U.S. antitrust laws assume that an increase in the number of competitors will increase consumer welfare, and rely upon post-

---

[9] Further Notice at ¶¶ 13, 18.

entry enforcement to control any abusive conduct in which a new entrant might engage. Only in those rare cases where the fact of entry itself will reduce competition, limit output and raise prices in a market will the antitrust laws permit new entry to be barred.[10]

If the Commission adopts its "competitive harm" test, therefore, it must make clear that the standard is an exacting one that may not be misused to prevent or impede, rather than promote, competition. Specifically, in defining and applying its proposed competitive harm standard, the Commission should make clear that it is protecting competition -- not competitors.

As the Commission has noted, denials of applications to serve the United States by non-U.S. licensed satellite operators inevitably pose a risk of anticompetitive consequences: such denials always exclude "potential competitors from the U.S. satellite market [and] could very well result in less competition both here and abroad."[11] Accordingly, these

---

[10] U.S. antitrust law recognizes the possibility of such a result only in the case of mergers and acquisitions that result in greater, rather than lesser, market concentration. *See, e.g.*, IV Phillip Areeda and Donald F. Turner, *Antitrust Law* ¶901 (1980). Otherwise, outright exclusion from a market is recognized, in both U.S. and European antitrust law, to be an inappropriate means of controlling potential anticompetitive behavior. As the European Union points out in its recent Comments in IB Docket No. 97-142, *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, "[t]he European Union and its Member States believe that, apart from the regulations generally required for the functioning of the telecommunications market, such as allocation of scarce resources and interconnection, general competition law is the main instrument to ensure effective competition . . . . The European Community and its Member States note that their rules do not allow the denial of licenses by an EC Member State to carriers which *might* be a major carrier in another [country] even if they engage in anti-competitive behavior at a later stage." Comments of European Union, Delegation of the European Commission (Aug. 5, 1997) at 3 ("EU Comments"). *See also United States v. Western Elec. Co.*, 900 F.2d 283, 296 (D.C. Cir. 1990).

[11] Notice at 18183.

applications should be denied only where the applicant has market power and will use that power to raise prices and limit output in the U.S. satellite market.[12]

The competitive harm standard also should not be satisfied by claims -- such as an opponent's complaint that it suffers competitive disabilities in a WTO destination country served by the applicant -- that would be relevant to an ECO-Sat inquiry but that must be resolved, in the post-WTO Agreement environment, through trade dispute procedures. Denial of the application on such grounds would limit rather than promote competition and, as previously noted, would violate the undertakings of the United States under the WTO Agreement.

Similarly, because of the danger that denial of applications from non-U.S. satellite operators licensed in WTO countries will restrict competition, harm consumers and violate the WTO Agreement, the required demonstration of a very high risk of competitive harm may not be based on mere speculation. Instead, opponents of entry must be required to prove that granting the request "would be *certain* to lessen competition in the [U.S. satellite] market.[13]

---

[12] This is the standard consistently applied by the Commission and the courts to determine whether entry of a firm into a market will harm competition. *See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act,* 9 FCC Rcd 1411, 1467 (1994). As the D.C. Circuit Court of Appeals stated in its decision establishing the standard for entry of the Bell operating companies into the market for information services, "[n]ew entry or increased competition in any market typically hurts and sometimes even destroys existing competitors. A court's solicitude for those competitors -- ostensibly in an effort to foster competition -- may well come at the expense of competition. . . . Accordingly, unless [a new entrant] will have the ability to raise prices or restrict output in the market it seeks to enter, there can be no substantial possibility that it could use its monopoly power to 'impede competition.'" *United States v. Western Elec. Co., supra,* 900 F.2d at 296.

[13] *Id.* (emphasis added).

C. The Scope Of The Proposed "Public Interest" Inquiry Must Be Strictly Limited

The Further Notice proposes that in addition to proof of a "very high risk of competitive harm," the presumption in favor of granting a request to serve the United States from a satellite authorized by a WTO member country may be overcome by undefined public interest concerns. ICO urges the Commission not to adopt an undefined public interest standard, which would violate the commitment of the United States to apply its regulations to other WTO members in a "reasonable, objective and impartial manner."[14] ICO urges the Commission to confirm that applications from WTO member licensed entities will not be denied on the basis of trade disputes between the United States and other WTO member nations, which the United States is now obligated to resolve exclusively through the WTO trade dispute mechanism. In order to avoid even the appearance that a residual "public interest" test will be used to evade commitments made under the WTO Agreement, the Commission must state unambiguously that only national security and law enforcement concerns will overcome the proposed presumption.[15]

D. The Commission Must Exhaust Every Technical Option To Accommodate Entry By Non-U.S. Licensed Satellites

The Commission states that with respect to spectrum availability and technical coordination, it proposes " to treat non-U.S. satellites as [it] would U.S.-licensed satellites,

---

[14] Art. VI.

[15] The Commission also should carefully define the scope of the national security and law enforcement concerns that it will include in its public interest inquiry, to ensure that those categories include only national defense, criminal law enforcement and similar concerns that do not implicate ordinary trade disputes. *See* EU Comments at 4.

assuming they satisfy the ECO-Sat test (where applicable)."[16] The Commission further states, however, that "in a service for which U.S. satellites have already been licensed, we would not expect to authorize a non-U.S. licensed satellite to serve the United States if grant would create debilitating interference problems or where the only technical solution would require the licensed systems to significantly alter their operations."[17] As with the public interest standard generally, the Commission must not use spectrum management policy in such a way as to raise barriers to entry in contravention of the WTO Agreement.[18]

Under the terms of the WTO Agreement, the United States has committed to open completely its market to competition in satellite services and to treat non-U.S. licensed satellite operators in the same manner as it treats U.S. licensed operators. Consistent with these commitments, as well as with its obligations under the ITU to coordinate international use of spectrum, the Commission must make every effort to accommodate both U.S. licensed and non-U.S. licensed satellite operators under comparable terms and conditions systems in existing spectrum. Although the Commission's desire to avoid interference among systems is proper, the Commission, nevertheless, may not improperly use spectrum

---

[16] Further Notice at ¶ 38.

[17] *Id.*

[18] *See* The United Kingdom Government's Comments on the Petition of the MSS Coalition for Partial Reconsideration, *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by Mobile-Satellite Service,* ET Docket No. 95-18 (June 30, 1997) at 2 (expressing concern that the FCC's imposition of relocation costs in connection with the allocation of radio spectrum at 2 GHz to MSS "will act as a serious barrier to entry to that market in the U.S."). *See also* Comments of the European Union, Docket No. 95-18 (filed with the U.S. Department of State on July 31, 1997) (expressing similar concern).

availability as a means of keeping non-U.S. licensed satellite operators out of the U.S. market when U.S. licensed satellite operators have been authorized to serve such market.

II. THE COMMISSION SHOULD NOT APPLY AN ECO-SAT TEST TO WTO MEMBER LICENSED SATELLITE OPERATORS THAT PROPOSE TO SERVE NON-WTO MEMBER COUNTRIES

In the Further Notice, the Commission asks commenters whether the agency should apply an ECO-Sat test to the non-WTO route markets to be served by a satellite licensed by a WTO member country.[19] The answer is no. If the Commission were to apply an ECO-Sat test in such a circumstance, it would be taking action that is wholly inconsistent with the WTO Agreement.

As noted above, under the WTO Agreement, the United States has committed to open completely its satellite services market to competition.[20] The United States' commitment includes the Reference Paper on Pro-Competitive Regulatory Principles ("Reference Paper.").[21] The application by the Commission of the ECO-Sat test to the non-WTO route markets served by a WTO member licensed satellite operator would mean that the United States' market for satellite services is not, in fact, completely open to competition. Those WTO member licensed satellites serving countries that do not pass the ECO-Sat test would be precluded from offering service to and from those countries.

---

[19] Further Notice at ¶ 25.

[20] *See* Commitment of the United States annexed to Fourth Protocol to the General Agreement on Trade in Services, World Trade Organization, Geneva, Switzerland (Apr. 15, 1997) ("U.S. Commitment").

[21] *See id.*

If the Commission were to apply the ECO-Sat test to the non-WTO route markets served by a WTO member licensed satellite operator, it also must apply the test to the non-WTO route markets served by U.S. licensed satellite operators. To do otherwise would violate the national treatment provisions of the WTO Agreement. As the Commission explains, those provisions require that "a WTO member . . . treat foreign services and service suppliers seeking to serve its country no less favorably than it treats its national services and service suppliers."[22] The Commission recognizes the national treatment issue raised by application of the ECO-Sat test to the non-WTO route markets of satellite operators licensed by WTO members when it states that "it might also be necessary to apply this approach to U.S.-licensed satellites."[23] ICO respectfully submits that there is absolutely no question that the WTO Agreement *requires* the Commission to apply the ECO-Sat test to U.S. licensed satellite operators if the Commission decides to apply the test to non-U.S. licensed satellite operators.

The fact that application of the ECO-Sat test to the non-WTO route markets of WTO member licensed satellite operators would violate the WTO Agreement is the primary, but not the only, reason why the Commission should reject such application. As ICO explained in its earlier comments, a route-by-route approach is inappropriate for MSS because MSS systems are designed to be global in nature.[24] An MSS system therefore conceivably could

---

[22] Further Notice at ¶ 8.

[23] *Id.* at ¶ 27.

[24] ICO Comments at 22.

serve more than 200 countries. It simply would be impractical to require a non-U.S. licensed MSS operator to make the requisite route-by-route showing for the more than 100 countries that are not a party to the WTO Agreement.

The route-by-route test proposed by the Commission in its initial Notice in this proceeding should not be applied to MSS for additional reasons. In an effort to avoid repetitious filings, ICO refers the Commission to its earlier comments concerning the difficult problems of proof that plague the Commission's proposed route-by-route approach.[25]

For all of these reasons, the Commission should adopt the alternative proposal set forth in the Further Notice. Specifically, the Commission should "give WTO satellites the same flexibility as [it] now give[s] U.S. satellites" by "not apply[ing] an ECO-Sat test in cases involving WTO member satellites, regardless of the route market."[26] To the extent that the Commission wishes to promote competition in countries that have not signed the WTO Agreement, it should do so by encouraging the ITU notifying administrations for MSS systems to apply a "no special concessions" condition to their authorized MSS operators similar to that applied by the Commission to U.S. licensed operators. As ICO previously noted, unlike the ECO-Sat test, such an approach will serve the Commission's goal of "enhancing competition in the global market for satellite services" by helping ensure that U.S. licensed MSS operators are not discriminated against in other countries and by

---

[25] *See id.* at 22-24.

[26] Further Notice at ¶ 27.

helping to ensure that no MSS operator -- U.S. licensed or otherwise -- is discriminated against in other countries.[27]

III. THE PROPOSED TREATMENT OF FUTURE IGO AFFILIATES IS INAPPLICABLE TO ICO

In its Further Notice, the Commission sets forth its proposed treatment of future IGO affiliates. Specifically, the Commission proposes "not to apply an ECO-Sat test to applications to use satellites of IGO affiliates if the affiliates are companies of WTO-members."[28] Presumably, the Commission is contemplating applying the ECO-Sat test to IGO affiliates if the affiliates are not companies of WTO members. ICO submits that the Commission's proposed treatment of future IGO affiliates is inapplicable to ICO for the following reasons.

First, as ICO explained in its earlier comments, it is not an IGO affiliate.[29] Although ICO had its origins in an Inmarsat project, today ICO is a private, commercial, market-driven entity that is constitutionally, managerially and operationally an entirely separate entity from Inmarsat. ICO enjoys no special privileges or immunities as a result of its Inmarsat origins. Thus, ICO is a start-up company that is no different from any other private, commercial satellite operator.

Second, even assuming, for sake of argument, that ICO were an IGO affiliate, it is not a "future" IGO affiliate and, as such, would not be covered by the Commission's IGO-

---

[27] *See* ICO Comments at 39.

[28] Further Notice at ¶ 34.

[29] ICO Comments at 42-44.

related proposals. The Commission tentatively concludes that its proposals set forth in the Further Notice with respect to IGOs "would apply to evaluation of requests to use satellites of *future* IGO affiliates."[30] Because ICO has been in existence since 1995, it is not a future IGO affiliate.

In sum, ICO is a private, commercial entity to be authorized by the government of the United Kingdom, which is expected to be a party to the WTO Agreement. As such, the Commission should treat ICO in the same manner as it proposes to treat any other private, commercial MSS operator licensed by a WTO member country. Specifically, the Commission should presume that competition will be promoted by grant of ICO's application to serve the United States and should not apply an ECO-Sat test -- or any equivalent test -- to such application.

IV. THE COMMISSION SHOULD NOT REQUIRE NON-U.S. LICENSED SATELLITE OPERATORS TO PROVIDE INFORMATION THAT DUPLICATES INFORMATION ALREADY PROVIDED TO THE OPERATOR'S HOME GOVERNMENT

In its Further Notice, the Commission proposes to require non-U.S. licensed satellite operators to provide to the Commission the same information required of U.S. licensed operators.[31] This required information includes legal, technical and financial information.[32] The Commission's proposal requires more information than is necessary to the authorization process and should not be adopted.

---

[30] Further Notice at ¶ 36 (emphasis added).

[31] *Id.* at ¶ 60.

[32] *See* 47 C.F.R. § 25.114.

In its initial Notice, the Commission concluded that the public interest would not be served by requiring a satellite already coordinated outside the United States to obtain a license issued by the Commission.[33] Specifically, the Commission stated that "duplicative licensing would be time-consuming and wasteful."[34]

If, as it proposes, the Commission were to require satellite operators licensed or authorized by other countries to provide the same information as a satellite operator seeking a license issued by the United States, the Commission would, in effect, be re-licensing those non-U.S. licensed satellite operators. As such, the Commission would be engaging in the very "time-consuming and duplicative" actions it previously sought to avoid. Moreover, if the Commission were to adopt its proposed requirement, it would risk encouraging other countries to adopt similar "time-consuming and duplicative" requirements, to the detriment of U.S. licensed satellite operators seeking to access foreign markets.

In addition, a requirement that satellite operators licensed by other countries provide all of the same information to the Commission as a satellite operator seeking a license issued by the United States is unwarranted. Much of the legal and financial information that the Commission would require from non-U.S. licensed operators presumably has already been provided to another coordinating administration that has found the satellite operator qualified to receive an authorization to build its system and commence service. For example, in ICO's case, ICO is subject to, and is in the process of complying with, the space

---

[33] Notice at ¶ 18184-86.

[34] *Id.*

station authorization requirements of the United Kingdom. Pursuant to the United Kingdom's due diligence and competence requirements regarding authorization of space segment operation, ICO has supplied to the Department of Trade and Industry ("DTI") technical, financial and legal credentials designed to demonstrate that ICO can construct, launch and operate its system according to the timetables set forth in ICO's business plan. Pursuant to those requirements, ICO also submits progress reports to DTI on a regular basis. In addition, ICO is required to submit detailed corporate and system information to the British National Space Center pursuant to the United Kingdom's Outer Space Act. Given these numerous requirements, additional space station regulatory requirements imposed by the United States would be burdensome and unnecessary.

The principles of national sovereignty and administrative comity would suggest that the Commission accept a foreign administration's determination that a satellite operator is authorized to provide service. As the Commission itself has recognized, "many foreign administrations would understandably expect the United States to accept the sufficiency of satellite licensing procedures abroad -- as we expect them to accept the sufficiency of our procedures."[35] Assuming that the Commission does not seek to challenge the validity of another administration's grant of an authorization to a satellite operator, there is no reason for the Commission to impose on non-U.S. licensed operators the burden of supplying the same legal and financial information required of applicants seeking a space segment license from the Commission.

---

[35] *Id.*

Although ICO opposes the notion that the Commission should require non-U.S. licensed operators to provide all of the same legal and financial information as U.S. applicants, it does agree that the Commission is justified in seeking certain technical information from non-U.S. licensed satellite operators. Because such information is required for both international and domestic coordination purposes, the Commission reasonably may require non-U.S. licensed satellite operators to provide certain technical information (plus program implementation information) required of satellite operators seeking licenses from the Commission.

CONCLUSION

For all of the foregoing reasons, the Commission should (1) adopt its proposal to streamline the evaluation of WTO member licensed satellite operators' requests to provide MSS service in the United States and apply a presumption in favor of granting those requests; (2) require a showing of harm to national security or law enforcement concerns in order to overcome the presumption that a WTO member licensed satellite operator is eligible for streamlined treatment; (3) refrain from applying an ECO-Sat test to WTO member licensed satellite operators that propose to serve non-WTO member

countries; and (4) reject its proposal to require non-U.S. licensed satellite operators to provide redundant legal and financial information.

Respectfully submitted,

By: _____

Richard DalBello
Francis D.R. Coleman
ICO Global Communications
1101 Connecticut Avenue, N.W.
Suite 550
Washington, D.C. 20036
(202) 887-8111

Cheryl A. Tritt
Charles H. Kennedy
Susan H. Crandall
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
(202) 887-1500

Attorneys for ICO
Global Communications

August 21, 1997

CERTIFICATE OF SERVICE

I, Kimberly E. Thomas, do hereby certify that the foregoing **FURTHER COMMENTS OF ICO GLOBAL COMMUNICATIONS** was hand delivered on this 21st day of August,1997, to the following:

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., - Room 222
Washington, D.C. 20554

Daniel Phythyon, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., - Room 5002
Washington, D.C. 20554

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., - Room 814
Washington, D.C. 20554

William E. Kennard
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W., - Room 614B
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., - Room 802
Washington, D.C. 20554

Diane Cornell, Chief
Telecommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., - Room 838
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., - Room 844
Washington, D.C. 20554

Cecily C. Holiday, Deputy Chief
Satellite & Radiocommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., - Room 590
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., - Room 832
Washington, D.C. 20554

Kathleen Campbell
International Bureau
Federal Communications Commission
2000 M Street, N.W., - Room 500
Washington, D.C. 20554

Peter Cowhey, Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., - Room 830
Washington, D.C. 20554

Virginia Marshall
International Bureau
Federal Communications Commission
2000 M Street, N.W., - Room 590
Washington, D.C. 20554

Thomas Tycz, Chief
Satellite & Radiocommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., - Room 800
Washington, D.C. 20554

Richard Beaird
Senior Deputy US Coordinator
US Department of State
EB/CIP - Room 4826
2201 C Street, N.W.
Washington, D.C. 20520

James L. Ball
Assistant Bureau Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., - Room 820
Washington, D.C. 20554

Kathleen Wallman
Deputy Assistant to the President
and Chief of Staff Economic Policy
Office of Policy Development
Executive Office Building
2nd Floor, West Wing
Washington, D.C. 20500

Robert M. Pepper, Chief
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., - Room 822
Washington, D.C. 20554

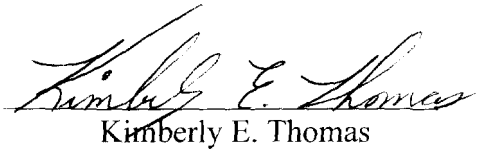
Vonya B. McCann
US Department of State
EB/CIP - Room 4826
2201 C Street, N.W.
Washington, D.C. 20520

Donald Gips
Chief, Domestic Policy Advisor
to the Vice President
Office of the Vice President
Old Executive Office Building
Washington, D.C. 20501

Larry Irving, Assistant Secretary
NTIA
14th & Constitution Ave., N.W.
Room 4898
Washington, D.C. 20230

Jack Gleason
Director, International Policy Division
NTIA
14th & Constitution Ave., N.W.
Room 4720
Washington, D.C. 20230

Richard Parlow
Office of Spectrum Management
NTIA
14th & Constitution Ave., N.W.
Room 4099
Washington, D.C. 20230



Kimberly E. Thomas